

Representative Brad R. Wilson proposes the following substitute bill:

CRIME VICTIM RESTITUTION AMENDMENTS

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Brad R. Wilson

Senate Sponsor: Lyle W. Hillyard

LONG TITLE

General Description:

This bill makes changes in the composition of restitution orders and the priority for distribution of restitution payments.

Highlighted Provisions:

This bill:

- ▶ includes reasonable expenses for participation in the adjudicative process as pecuniary damages;
- ▶ requires that the victim be paid first when a restitution payment is made; and
- ▶ makes technical corrections.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

77-27-5, as last amended by Laws of Utah 2010, Chapter 110

77-27-6, as last amended by Laws of Utah 2005, Chapter 96

77-38-3, as last amended by Laws of Utah 2013, Chapters 196 and 445



26 [77-38a-102](#), as last amended by Laws of Utah 2015, Chapter 147
27 [77-38a-302](#), as last amended by Laws of Utah 2013, Chapter 74
28 [77-38a-404](#), as last amended by Laws of Utah 2011, Chapters 131 and 208

30 *Be it enacted by the Legislature of the state of Utah:*

31 Section 1. Section [77-27-5](#) is amended to read:

32 **[77-27-5. Board of Pardons and Parole authority.](#)**

33 (1) (a) The Board of Pardons and Parole shall determine by majority decision when and
34 under what conditions, subject to this chapter and other laws of the state, persons committed to
35 serve sentences in class A misdemeanor cases at penal or correctional facilities which are under
36 the jurisdiction of the Department of Corrections, and all felony cases except treason or
37 impeachment or as otherwise limited by law, may be released upon parole, pardoned, ordered
38 to pay restitution, or have their fines, forfeitures, or restitution remitted, or their sentences
39 commuted or terminated.

40 (b) The board may sit together or in panels to conduct hearings. The chair shall
41 appoint members to the panels in any combination and in accordance with rules promulgated
42 by the board, except in hearings involving commutation and pardons. The chair may
43 participate on any panel and when doing so is chair of the panel. The chair of the board may
44 designate the chair for any other panel.

45 (c) No restitution may be ordered, no fine, forfeiture, or restitution remitted, no parole,
46 pardon, or commutation granted or sentence terminated, except after a full hearing before the
47 board or the board's appointed examiner in open session. Any action taken under this
48 subsection other than by a majority of the board shall be affirmed by a majority of the board.

49 (d) A commutation or pardon may be granted only after a full hearing before the board.

50 (e) The board may determine restitution as provided in Section [77-27-6](#) and Subsection
51 [77-38a-302\(5\)\(d\)\(~~ii~~\)\(iii\)\(A\)](#).

52 (2) (a) In the case of original parole grant hearings, rehearings, and parole revocation
53 hearings, timely prior notice of the time and location of the hearing shall be given to the
54 defendant, the county or district attorney's office responsible for prosecution of the case, the
55 sentencing court, law enforcement officials responsible for the defendant's arrest and
56 conviction, and whenever possible, the victim or the victim's family.

57 (b) Notice to the victim, his representative, or his family shall include information
58 provided in Section 77-27-9.5, and any related rules made by the board under that section.
59 This information shall be provided in terms that are reasonable for the lay person to
60 understand.

61 (3) Decisions of the board in cases involving paroles, pardons, commutations or
62 terminations of sentence, restitution, or remission of fines or forfeitures are final and are not
63 subject to judicial review. Nothing in this section prevents the obtaining or enforcement of a
64 civil judgment, including restitution as provided in Section 77-27-6.

65 (4) This chapter may not be construed as a denial of or limitation of the governor's
66 power to grant respite or reprieves in all cases of convictions for offenses against the state,
67 except treason or conviction on impeachment. However, respites or reprieves may not extend
68 beyond the next session of the Board of Pardons and Parole and the board, at that session, shall
69 continue or terminate the respite or reprieve, or it may commute the punishment, or pardon the
70 offense as provided. In the case of conviction for treason, the governor may suspend execution
71 of the sentence until the case is reported to the Legislature at its next session. The Legislature
72 shall then either pardon or commute the sentence, or direct its execution.

73 (5) In determining when, where, and under what conditions offenders serving sentences
74 may be paroled, pardoned, have restitution ordered, or have their fines or forfeitures remitted,
75 or their sentences commuted or terminated, the board shall consider whether the persons have
76 made or are prepared to make restitution as ascertained in accordance with the standards and
77 procedures of Section 77-38a-302, as a condition of any parole, pardon, remission of fines or
78 forfeitures, or commutation or termination of sentence.

79 (6) In determining whether parole may be terminated, the board shall consider the
80 offense committed by the parolee, the parole period as provided in Section 76-3-202, and in
81 accordance with Section 77-27-13.

82 Section 2. Section 77-27-6 is amended to read:

83 **77-27-6. Payment of restitution.**

84 (1) When the Board of Pardons and Parole orders the release on parole of an inmate
85 who has been sentenced to make restitution pursuant to Title 77, Chapter 38a, Crime Victims
86 Restitution Act, or whom the board has ordered to make restitution, and all or a portion of
87 restitution is still owing, the board may establish a schedule, including both complete and

88 court-ordered restitution, by which payment of the restitution shall be made, or order
89 compensatory or other service in lieu of or in combination with restitution. In fixing the
90 schedule and supervising the paroled offender's performance, the board may consider the
91 factors specified in Section 77-38a-302.

92 (2) (a) The board may impose any court order for restitution.

93 (b) In accordance with Subsection 77-38a-302(5)(d)[(ii)](iii)(A), the board may order
94 that a defendant make restitution for pecuniary damages that were not determined by the court,
95 unless the board applying the criteria as set forth in Section 77-38a-302 determines that
96 restitution is inappropriate.

97 (c) Except as provided in Subsection (2)(d), the board shall make all orders of
98 restitution within 60 days after the termination or expiration of the defendant's sentence.

99 (d) If, upon termination or expiration of a defendant's sentence, the board has
100 continuing jurisdiction over the defendant for a separate criminal offense, the board may defer
101 making an order of restitution until termination or expiration of all sentences for that
102 defendant.

103 (3) The board may also make orders of restitution for recovery of any or all costs
104 incurred by the Department of Corrections or the state or any other agency arising out of the
105 defendant's needs or conduct.

106 (4) If the defendant, upon termination or expiration of the sentence owes outstanding
107 fines, restitution, or other assessed costs, or if the board makes an order of restitution within 60
108 days after the termination or expiration of the defendant's sentence, the matter shall be referred
109 to the district court for civil collection remedies. The Board of Pardons and Parole shall
110 forward a restitution order to the sentencing court to be entered on the judgment docket. The
111 entry shall constitute a lien and is subject to the same rules as a judgment for money in a civil
112 judgment.

113 Section 3. Section 77-38-3 is amended to read:

114 **77-38-3. Notification to victims -- Initial notice, election to receive subsequent**
115 **notices -- Form of notice -- Protected victim information -- Pretrial criminal no contact**
116 **order.**

117 (1) Within seven days of the filing of felony criminal charges against a defendant, the
118 prosecuting agency shall provide an initial notice to reasonably identifiable and locatable

119 victims of the crime contained in the charges, except as otherwise provided in this chapter.

120 (2) The initial notice to the victim of a crime shall provide information about electing
121 to receive notice of subsequent important criminal justice hearings listed in Subsections
122 [77-38-2\(5\)\(a\)](#) through (f) and rights under this chapter.

123 (3) The prosecuting agency shall provide notice to a victim of a crime;

124 (a) for the important criminal justice hearings, provided in Subsections [77-38-2\(5\)\(a\)](#)
125 through (f), which the victim has requested[-]; and

126 (b) for restitution requests to be submitted as provided in Subsection [77-38a-302\(5\)\(d\)](#).

127 (4) (a) The responsible prosecuting agency may provide initial and subsequent notices
128 in any reasonable manner, including telephonically, electronically, orally, or by means of a
129 letter or form prepared for this purpose.

130 (b) In the event of an unforeseen important criminal justice hearing, listed in
131 Subsections [77-38-2\(5\)\(a\)](#) through (f) for which a victim has requested notice, a good faith
132 attempt to contact the victim by telephone shall be considered sufficient notice, provided that
133 the prosecuting agency subsequently notifies the victim of the result of the proceeding.

134 (5) (a) The court shall take reasonable measures to ensure that its scheduling practices
135 for the proceedings provided in Subsections [77-38-2\(5\)\(a\)](#) through (f) permit an opportunity for
136 victims of crimes to be notified.

137 (b) The court shall also consider whether any notification system it might use to
138 provide notice of judicial proceedings to defendants could be used to provide notice of those
139 same proceedings to victims of crimes.

140 (6) A defendant or, if it is the moving party, Adult Probation and Parole, shall give
141 notice to the responsible prosecuting agency of any motion for modification of any
142 determination made at any of the important criminal justice hearings provided in Subsections
143 [77-38-2\(5\)\(a\)](#) through (f) in advance of any requested court hearing or action so that the
144 prosecuting agency may comply with its notification obligation.

145 (7) (a) Notice to a victim of a crime shall be provided by the Board of Pardons and
146 Parole for the important criminal justice hearing provided in Subsection [77-38-2\(5\)\(g\)](#).

147 (b) The board may provide notice in any reasonable manner, including telephonically,
148 electronically, orally, or by means of a letter or form prepared for this purpose.

149 (8) Prosecuting agencies and the Board of Pardons and Parole are required to give

150 notice to a victim of a crime for the proceedings provided in Subsections 77-38-2(5)(a) through
151 (f) only where the victim has responded to the initial notice, requested notice of subsequent
152 proceedings, and provided a current address and telephone number if applicable.

153 (9) (a) Law enforcement and criminal justice agencies shall refer any requests for
154 notice or information about crime victim rights from victims to the responsible prosecuting
155 agency.

156 (b) In a case in which the Board of Pardons and Parole is involved, the responsible
157 prosecuting agency shall forward any request for notice it has received from a victim to the
158 Board of Pardons and Parole.

159 (10) In all cases where the number of victims exceeds 10, the responsible prosecuting
160 agency may send any notices required under this chapter in its discretion to a representative
161 sample of the victims.

162 (11) (a) A victim's address, telephone number, and victim impact statement maintained
163 by a peace officer, prosecuting agency, Youth Parole Authority, Division of Juvenile Justice
164 Services, Department of Corrections, and Board of Pardons and Parole, for purposes of
165 providing notice under this section, is classified as protected as provided in Subsection
166 63G-2-305(10).

167 (b) The victim's address, telephone number, and victim impact statement is available
168 only to the following persons or entities in the performance of their duties:

- 169 (i) a law enforcement agency, including the prosecuting agency;
- 170 (ii) a victims' right committee as provided in Section 77-37-5;
- 171 (iii) a governmentally sponsored victim or witness program;
- 172 (iv) the Department of Corrections;
- 173 (v) the Utah Office for Victims of Crime;
- 174 (vi) the Commission on Criminal and Juvenile Justice; and
- 175 (vii) the Board of Pardons and Parole.

176 (12) The notice provisions as provided in this section do not apply to misdemeanors as
177 provided in Section 77-38-5 and to important juvenile justice hearings as provided in Section
178 77-38-2.

179 (13) (a) When a defendant is charged with a felony crime under Sections 76-5-301
180 through 76-5-310 regarding kidnapping, human trafficking, and human smuggling; Sections

181 76-5-401 through 76-5-413 regarding sexual offenses; or Section 76-10-1306 regarding
182 aggravated exploitation of prostitution, the court may, during any court hearing where the
183 defendant is present, issue a pretrial criminal no contact order:

184 (i) prohibiting the defendant from harassing, telephoning, contacting, or otherwise
185 communicating with the victim directly or through a third party;

186 (ii) ordering the defendant to stay away from the residence, school, place of
187 employment of the victim, and the premises of any of these, or any specified place frequented
188 by the victim or any designated family member of the victim directly or through a third party;
189 and

190 (iii) ordering any other relief that the court considers necessary to protect and provide
191 for the safety of the victim and any designated family or household member of the victim.

192 (b) Violation of a pretrial criminal no contact order issued pursuant to this section is a
193 third degree felony.

194 (c) (i) The court shall provide to the victim a certified copy of any pretrial criminal no
195 contact order that has been issued if the victim can be located with reasonable effort.

196 (ii) The court shall also transmit the pretrial criminal no contact order to the statewide
197 domestic violence network in accordance with Section 78B-7-113.

198 Section 4. Section 77-38a-102 is amended to read:

199 **77-38a-102. Definitions.**

200 As used in this chapter:

201 (1) "Conviction" includes a:

202 (a) judgment of guilt;

203 (b) a plea of guilty; or

204 (c) a plea of no contest.

205 (2) "Criminal activities" means:

206 (a) any offense of which the defendant is convicted; or

207 (b) any other criminal conduct for which the defendant admits responsibility to the
208 sentencing court with or without an admission of committing the criminal conduct.

209 (3) "Department" means the Department of Corrections.

210 (4) "Diversion" means suspending criminal proceedings prior to conviction on the
211 condition that a defendant agree to participate in a rehabilitation program, make restitution to

212 the victim, or fulfill some other condition.

213 (5) "Party" means the prosecutor, defendant, or department involved in a prosecution.

214 (6) "Pecuniary damages" means all demonstrable economic injury, whether or not yet
215 incurred, including those which a person could recover in a civil action arising out of the facts
216 or events constituting the defendant's criminal activities and includes the fair market value of
217 property taken, destroyed, broken, or otherwise harmed, and losses including lost earnings,
218 including those and other travel expenses reasonably incurred as a result of participation in
219 criminal proceedings, and medical and other expenses, but excludes punitive or exemplary
220 damages and pain and suffering.

221 (7) "Plea agreement" means an agreement entered between the prosecution and
222 defendant setting forth the special terms and conditions and criminal charges upon which the
223 defendant will enter a plea of guilty or no contest.

224 (8) "Plea disposition" means an agreement entered into between the prosecution and
225 defendant including diversion, plea agreement, plea in abeyance agreement, or any agreement
226 by which the defendant may enter a plea in any other jurisdiction or where charges are
227 dismissed without a plea.

228 (9) "Plea in abeyance" means an order by a court, upon motion of the prosecution and
229 the defendant, accepting a plea of guilty or of no contest from the defendant but not, at that
230 time, entering judgment of conviction against him nor imposing sentence upon him on
231 condition that he comply with specific conditions as set forth in a plea in abeyance agreement.

232 (10) "Plea in abeyance agreement" means an agreement entered into between the
233 prosecution and the defendant setting forth the specific terms and conditions upon which,
234 following acceptance of the agreement by the court, a plea may be held in abeyance.

235 (11) "Restitution" means full, partial, or nominal payment for pecuniary damages to a
236 victim, including prejudgment interest, the accrual of interest from the time of sentencing,
237 insured damages, reimbursement for payment of a reward, and payment for expenses to a
238 governmental entity for extradition or transportation and as may be further defined by law.

239 (12) (a) "Reward" means a sum of money:

240 (i) offered to the public for information leading to the arrest and conviction of an
241 offender; and

242 (ii) that has been paid to a person or persons who provide this information, except that

243 the person receiving the payment may not be a codefendant, an accomplice, or a bounty hunter.

244 (b) "Reward" does not include any amount paid in excess of the sum offered to the
245 public.

246 (13) "Screening" means the process used by a prosecuting attorney to terminate
247 investigative action, proceed with prosecution, move to dismiss a prosecution that has been
248 commenced, or cause a prosecution to be diverted.

249 (14) (a) "Victim" means any person or entity, including the Utah Office for Victims of
250 Crime, who the court determines has suffered pecuniary damages as a result of the defendant's
251 criminal activities.

252 (b) "Victim" may not include a codefendant or accomplice.

253 Section 5. Section **77-38a-302** is amended to read:

254 **77-38a-302. Restitution criteria.**

255 (1) When a defendant is convicted of criminal activity that has resulted in pecuniary
256 damages, in addition to any other sentence it may impose, the court shall order that the
257 defendant make restitution to victims of crime as provided in this chapter, or for conduct for
258 which the defendant has agreed to make restitution as part of a plea disposition. For purposes
259 of restitution, a victim has the meaning as defined in Subsection **77-38a-102**(14) and in
260 determining whether restitution is appropriate, the court shall follow the criteria and procedures
261 as provided in Subsections (2) through (5).

262 (2) In determining restitution, the court shall determine complete restitution and
263 court-ordered restitution.

264 (a) "Complete restitution" means restitution necessary to compensate a victim for all
265 losses caused by the defendant.

266 (b) "Court-ordered restitution" means the restitution the court having criminal
267 jurisdiction orders the defendant to pay as a part of the criminal sentence [~~at the time of~~
268 ~~sentencing or within one year after sentencing~~].

269 (c) Complete restitution and court-ordered restitution shall be determined as provided
270 in Subsection (5).

271 (3) If the court determines that restitution is appropriate or inappropriate under this
272 part, the court shall make the reasons for the decision part of the court record.

273 (4) If the defendant objects to the imposition, amount, or distribution of the restitution,

274 the court shall allow the defendant a full hearing on the issue.

275 (5) (a) For the purpose of determining restitution for an offense, the offense shall
276 include any criminal conduct admitted by the defendant to the sentencing court or to which the
277 defendant agrees to pay restitution. A victim of an offense that involves as an element a
278 scheme, a conspiracy, or a pattern of criminal activity, includes any person directly harmed by
279 the defendant's criminal conduct in the course of the scheme, conspiracy, or pattern.

280 (b) In determining the monetary sum and other conditions for complete restitution, the
281 court shall consider all relevant facts, including:

282 (i) the cost of the damage or loss if the offense resulted in damage to or loss or
283 destruction of property of a victim of the offense;

284 (ii) the cost of necessary medical and related professional services and devices relating
285 to physical or mental health care, including nonmedical care and treatment rendered in
286 accordance with a method of healing recognized by the law of the place of treatment;

287 (iii) the cost of necessary physical and occupational therapy and rehabilitation;

288 (iv) the income lost by the victim as a result of the offense [~~if the offense resulted in~~
289 ~~bodily injury to a victim~~];

290 (v) [~~up to five days of~~] the individual victim's reasonable determinable wages that are
291 lost due to theft of or damage to tools or equipment items of a trade that were owned by the
292 victim and were essential to the victim's current employment at the time of the offense; and

293 (vi) the cost of necessary funeral and related services if the offense resulted in the death
294 of a victim.

295 (c) In determining the monetary sum and other conditions for court-ordered restitution,
296 the court shall consider:

297 (i) the factors listed in Subsections (5)(a) and (b);

298 (ii) the financial resources of the defendant, as disclosed in the financial declaration
299 described in Section [77-38a-204](#);

300 (iii) the burden that payment of restitution will impose, with regard to the other
301 obligations of the defendant;

302 (iv) the ability of the defendant to pay restitution on an installment basis or on other
303 conditions to be fixed by the court;

304 (v) the rehabilitative effect on the defendant of the payment of restitution and the

305 method of payment; and

306 (vi) other circumstances that the court determines may make restitution inappropriate.

307 ~~[(d) (i) Except as provided in Subsection (5)(d)(ii), the court shall determine complete~~
 308 ~~restitution and court-ordered restitution, and shall make all restitution orders at the time of~~
 309 ~~sentencing if feasible, otherwise within one year after sentencing.]~~

310 (d) (i) The prosecuting agency shall submit all requests for complete restitution and
 311 court ordered restitution to the court at the time of sentencing if feasible, otherwise within one
 312 year after sentencing.

313 (ii) If a defendant is placed on probation pursuant to Section 77-18-1:

314 (A) the court shall determine complete restitution and court ordered restitution; and

315 (B) the time period for determination of complete restitution and court ordered
 316 restitution may be extended by the court upon a finding of good cause, but may not exceed the
 317 period of the probation term served by the defendant.

318 (iii) If the defendant is committed to prison:

319 ~~[(ii) Any]~~ (A) any pecuniary damages that have not been determined by the court
 320 within one year after sentencing may be determined by the Board of Pardons and Parole[-]; and

321 ~~[(e) The]~~ (B) the Board of Pardons and Parole may, within one year after sentencing,
 322 refer an order of judgment and commitment back to the court for determination of restitution.

323 Section 6. Section **77-38a-404** is amended to read:

324 **77-38a-404. Priority.**

325 (1) Restitution payments made pursuant to a court order shall be disbursed to victims
 326 within 60 days of receipt from the defendant by the court or department provided:

327 (a) the victim has complied with Subsection **77-38a-203(1)(b)**;

328 (b) if the defendant has tendered a negotiable instrument, funds from the financial
 329 institution are actually received; and

330 (c) the payment to the victim is at least \$5, unless the payment is the final payment.

331 (2) If restitution to more than one person, agency, or entity is required at the same time,
 332 the department shall establish the following priorities of payment, except as provided in
 333 Subsection (4):

334 (a) the crime victim;

335 (b) the Utah Office for Victims of Crime;

336 (c) any other government agency which has provided reimbursement to the victim as a
337 result of the offender's criminal conduct;

338 (d) the person, entity, or governmental agency that has offered and paid a reward under
339 Section 76-3-201.1 or 78A-6-117;

340 (e) any insurance company which has provided reimbursement to the victim as a result
341 of the offender's criminal conduct; and

342 (f) any county correctional facility to which the defendant is required to pay restitution
343 under Subsection 76-3-201(6).

344 (3) Restitution ordered under Subsection (2)(f) is paid after criminal fines and
345 surcharges are paid.

346 (4) If the offender is required under Section 53-10-404 to reimburse the department for
347 the cost of obtaining the offender's DNA specimen, this reimbursement is the next priority after
348 restitution to the crime victim under Subsection (2)(a).

349 (5) All money collected for court-ordered obligations from offenders by the department
350 will be applied:

351 (a) first, to victim restitution[~~-, except the~~];

352 (b) second, to any current and past due amount of \$30 per month required to be
353 collected by the department under Section 64-13-21, if applicable; and

354 [~~(b) second~~] (c) third, if applicable, to the cost of obtaining a DNA specimen under
355 Subsection (4).

356 (6) Restitution owed to more than one victim shall be disbursed to each victim
357 according to the percentage of each victim's share of the total restitution order.